

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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PEARLITHA MARTIN

Plaintiff,

v.

WHITTLESEA,

Defendant.

Case No. 2:18-cv-02438-JAD-EJY

REPORT AND RECOMMENDATION

Re: Order Granting Application for Leave to
Proceed *in forma pauperis* (ECF No. 4)

This matter is before the Court on Plaintiff's failure to comply with the Court's Order (ECF No. 4). On July 29, 2019, Magistrate Judge George Foley, Jr. granted Plaintiff's Application for Leave to Proceed *in forma pauperis* (ECF No. 1), and dismissed Plaintiff's Complaint (ECF No. 1-1) without prejudice with leave to amend. Specifically, Magistrate Judge Foley, Jr. found that:

Plaintiff fails to allege a cognizable claim. She fails to allege any legal theory and fails to allege that this Court has subject matter jurisdiction over her claim. She merely alleges that she was harassed. To the extent Plaintiff intended to file a Title VII harassment claim, she failed to allege the harassment was based on race, color, religion, sex, or national origin or that her employer was liable for such harassment.

ECF No. 4 at 4:22–26. Further, to the extent Plaintiff intended to set forth a Title VII claim for workplace harassment, "Plaintiff failed to allege that she . . . exhausted her administrative remedies." *Id.* at 4:9.

In light of the above, Magistrate Judge Foley, Jr. gave Plaintiff "until August 30, 2019 to file an amended complaint correcting the noted deficiencies." *Id.* at 5:22–23. Plaintiff was warned that if she "fail[ed] to file an amended complaint or fail[ed] to cure the deficiencies identified above, the Court will recommend that the complaint be dismissed with prejudice." *Id.* at 5:11–13.

To date, Plaintiff has not submitted an amended complaint, requested an extension of time, or taken any other action to prosecute this case.

1 Accordingly,

2 IT IS HEREBY RECOMMENDED that Plaintiff's action, docketed as 2:18-cv-02438-JAD-
3 EJY, be dismissed with prejudice.

4 IT IS FURTHER RECOMMENDED that the Clerk of the Court be instructed to close this
5 case and enter judgment accordingly.

6 DATED: January 9, 2020.

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8 ELAYNA J. YOUCHAH
9 UNITED STATES MAGISTRATE JUDGE

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11 **NOTICE**

12 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be
13 in writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has
14 held that the courts of appeal may determine that an appeal has been waived due to the failure to file
15 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
16 held that (1) failure to file objections within the specified time and (2) failure to properly address
17 and brief the objectionable issues waives the right to appeal the District Court's order and/or appeal
18 factual issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir.
19 1991); *Britt v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

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